IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

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WRIT PETITION NO : 12761 of 1998

Between:

M/s. Shriram Fuel Injection Industries, (A Unit of the Jay Engg. Works Ltd.), Balanagar, Hyderabad, rep.by its Asst. General Manager, Shri J.P. Trivedi.

..... PETITIONER

AND

1. The Hon'ble Industrial Tribunal-II, 'Chandra Vihar', M.J.Road, Nampally, Hyderabad, rep.by its Chairman
2. G. Venkaiah @ G. Venkataiah – T.No. V 497
3. P.Ch. Rambabu – T.No. R 869
4. L. Prakash Rao - T.No. P 348
5. V. Rajeshwar Rao – T.No. R 890
6. S. Ramakrishna T.No. R 34
7. Ch. Veeresham T.No. V 521
8. C. Balaiah T.No. BA 01
9. M.S. Prasad T.No. SE 68
10. P. Rajesh T.No. RA 48
11. Kanaka Raju T.No. KA 05
12. Venkataramana T.No. VA 54
13. Ch.Lakshminarayana T.No. L 181
14. M. Ram Babu T.No. RA 36
15. P. Narsimhulu T.No. NA 56

(RR 2 to 15, workers of Shriram Fuel Injection Industries, C/o. Shriram Fuel Injection Industries, Balanagar, Hyderabad)

16. State of Andhra Pradesh, rep. by its Secretary, Incharge Labour, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ order or orders or direction and call for records and quash and set aside the Award made in I.D.No. 42 of 1995, dated 11-2-1998 on the file of the Hon'ble Industrial Tribunal-II, Hyderabad ;

Counsel for the Petitioner: MR.P.NAGESWAR SREE

Counsel for the Respondent No.: MR.B.G.RAVINDER REDDY

The Court made the following :

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ORDER:

This writ petition is filed by the Management of Shriram Fuel Injection Industries, being aggrieved by the Award dated 11-2-1998 in I.D.No.42 of 1995 passed by the Industrial Tribunal–II at Hyderabad. The workers of Shriram Fuel Injection Industries, Balanagar, Hyderabad raised a dispute before the Commissioner of Labour for regularisation of their services and when the joint meetings were going on, the management terminated the services of workers (17 in number) without any notice. The matter was brought to the notice of the Labour Department, who rendered advice for reinstatement of the workers, but the management refused to do so. Therefore, the matter was referred to the Government and the Government in turn referred the matter vide GORT No. 1965, Labour, Employment Tribunal & Factories (LAB.I) Department, dated 24-8-1985 to the Labour Court which reads as under;

> " Whether the management of Shriram Fuel Injection Industries, Balanagar, Hyderabad is justified in terminating the services of 17 casual workers, whose names are given in annexure, without considering their demand for regularisation of their services."

The same was numbered as I.D.No.42 of 1995 before the Industrial Tribunal II Hyderabad. The workers of Shriram Fuel Injection Industries, Balanagar filed a claim statement stating that they worked as casual workmen with the industry on different dates of their appointments starting from 1988 and they were working to the satisfaction of the respondents without any complaints. The respondents engaged them on casual basis depriving their permanent status. Since the regular employees are paid much higher wages and are provided with better service benefits, they requested the respondent management to make them permanent as they are in continuous service of the respondent, for which, the respondent/Management ignored the same. Therefore, the workmen approached the Commissioner of Labour for regularisation of their services and there were joint meetings. In the meanwhile, the management terminated their services. Immediately, the said fact was brought to the notice of the Commissioner of Labour, who rendered advice to the management for reinstatement of the workmen, for which, the management refused to do so.

Before the Industrial Tribunal, on behalf of respondent/management a detailed counter was filed denying the allegations made by the workmen and stated that the workmen herein are put to strict proof of the allegations. The employees union, which was a registered one, did not sponsor the dispute itself. The petitioners were engaged on casual basis on daily wage rate. Though they were paid wages once in a month, for the purpose of convenience, they were never engaged continuously. Therefore, the petitioners' retirement or retrenchment or termination of services does not arise since their jobs were on day to day basis and they were not regular employees of the respondent Company. Engagement of casual labour was at the discretion of the company and casual labour cannot claim any right over their job. The management had entered into an agreement with the union and as per the settlement the respondent cannot engage more casual than what was required and in order to maintain the manufacture of the product at a particular level casuals are required and it is not a permanent nature of work attended to by them. Further it was stated that as the company became a sick unit, the matter was referred to BIFR and a case was registered in I.D No. 11 of 1994 and that the respondent has got

sufficient man power on permanent rolls and the accumulated loss of the company has crossed 50 crores and as such they cannot regularise the services of the casuals.

Before the Labour Court, to prove their case, the workmen were examined as WWs 1 to 14 and marked documents Exs.W1 to W31. On behalf of the respondent/management MW1 and MW2 were examined and documents Exs.M1 to M7 were marked. The Labour Court formulated the following points for consideration.

1. Whether the petitioners are working as Casual workers with the respondent?

2. Whether the petitioners are in continuous service and for more than 240 days in 12 Calendar months with the respondent?

3. Whether the respondent has to consider their demand for regularisation of their services?

4. Whether the respondent is justified in terminating the services of the petitioners?

5. Whether the Tribunal has no jurisdictions to adjudicate the dispute as the proceedings are pending before BIFR?

The Labour Court considered each and every aspect of the evidence and came to the conclusion that the workmen are the casual workers and they worked for more than 240 days preceding the date of their termination from service. It is suffice to note the findings of the Labour Court at page 113 which reads as under

"Undoubtedly the burden is on the petitioner to prove that they are in continuous service of 240 days in 12 Calendar months in a year. In order to prove this fact the petitioners relied on the oral evidence of WW 1 to WW 14 and Ex. W1 to Ex. W 31. All the witnesses have categorically deposed about their date of appointment and their continuous service with the respondent. The bunch of pay-slips of the workmen marked as exhibits through their evidence are as follows:-

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Sl. Exhibit Name No.of Period Total

No. No. witness months

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1. Ex.W1 G. Balaiah WW1 May'91 to June'94 38

2. Ex.9 V.Rajeswararao WW2 July92 - May 94 23

3. Ex.W11 N.Kanaka Raju WW3 May 91 - July 94 39

4. Ex.W12 M.S.Prasad WW4 Nov. 91 - June 94, 32

5. Ex.W13, Ch.Veeresham WW5 Nov.90 - July 94 47

6. Ex. W14 P. Rajesh WW6 Apr.92 - Nov. 94 32

7. Ex.W15 L. Prakash Rao WW7 May.90 - June 94 50

8. Ex.W16 S. Ramakrishna WW8 Mar.91 - Nov.94 45

9. Ex.W18 G.Venkaiah WW9 Feb.88 - June 94 77

10. Ex.W20 P.Narsimulu WW10 Jan.93 - Oct. 94 22

11. Ex.W21 Ch.Lakshmi WW11 May'92 - June'94 50

Narayana

12. Ex.W24 M. Ram Babu WW 12 May'92 - June'94 26

13. Ex.W25 P.Ch. Rambabu WW13 April.90 – June'94 51

14. Ex.W27 VenkataRamana WW14 Jan.93 - June'94 18

After examining the above documents, the Labour Court came to the conclusion that the workmen have established, by both documentary as well as oral evidence, that they worked continuously in the respondent organisation from the date of their respective date of appointment till June 1994 without any break.

The learned counsel for the petitioners (Management) herein submits that though the documents as stated above are marked, the Labour Court has not considered that whether each and every workmen had completed 240 days preceding the date of their termination and the findings of the Labour Court are not proper.

There is no dispute that the workmen were engaged as casual labour. Whether they were engaged on casual basis or in the vacancy that arose whenever a regular worker was absent, it all depends upon the number of days they were engaged to work. Therefore, the Labour Court came to the conclusion that the workers worked for more than 240 days in a calendar year preceding the date of their termination.

I have looked into the documents marked by the workmen as noted above.

They all reveal that each and every workmen had worked for more than 23 to 26 days in each month as per the pay slips. May be the other 4 or 5 days for which one or the other has not worked, being public holidays or on casual leaves and that itself does not mean that the workers have not worked continuously for 240 days in a calendar year preceding the date of their termination. The evidence was also looked into by both the counsel in the Court hall and the learned counsel for the petitioner(Management) submits that since the record shows that the workers worked in an average of about 20 – 25 days per month, it is clear that they were engaged on casual basis and therefore they have not satisfied the criteria of working of 240 days in a calendar year preceding the date of their termination from the service.

I am afraid I cannot agree with the contention of the learned counsel for the petitioner/Management and after verifying the documents ie., pay-slips Exs.W1, W11 to W16, W18, W20, W21, W24, W25 & W27, I am fully convinced with the findings of the Labour Court. In fact, no evidence was let in by the management to show that these workers were engaged only for a short period in every month or bi-monthly or they never completed 240 days of continuous service preceding the date of their termination from the service. In this regard it may be necessary to note the findings of the Labour Court which are as under ;

> “The evidence on record both oral as well as documentary clearly establish that the 14 workmen are in actual service of the respondent from years together. Their pay-slips and other documents clearly establish this fact. The respondent did not produce any records to show that any of the petitioners were not on duty on any petitioner day in a month during the relevant period. The contention of the petitioners is that they are in continuous and actual service in every month. Admittedly the respondent is maintaining registers but he did not produce to prove that the petitioners are only daily wager and their work commences in the morning and conclude in the evening. Already I held that WW1 to WW14 who have put actual work for more than 240 days in a year with the respondent are entitled for regularization. So it is proved beyond that the 14 workmen are regular workmen though they are designated as casuals.”

The only mistake committed by the Labour Court was that it did not give any categorical finding that the workmen have put in 240 days of service in a calendar year preceding the date of their termination. However, the appreciation of the Labour

Court that the workmen have worked for more than 240 days in a calendar year cannot be found fault with. Therefore, the Labour Court has rightly come to the conclusion that the termination of services of the workmen without following the provisions of 25-F of the Industrial Disputes Act (I.D. Act) was illegal. Apart from this, admittedly, there were more than 650 workers are working in the respondent management industry and the termination of any workman would attract the provisions of Chapter V(B) of I.D.Act and since there is no permission obtained for termination of these workmen as per the provisions of 25-N (7) of the Act, the workmen are entitled for all the consequential benefits. I see no reason to disturb the findings of the Labour Court in this regard.

The learned counsel for the petitioner/Management Nageswar Sree further submitted that in so far as point No.3 is concerned i.e., whether the respondent has to consider their demand for regularisation of the services were concerned, it is beyond the scope of the reference made by the Government and according to him no such reference was made so as to consider the entitlement of the workmen for reguarlisation of their services as per law. The Labour Court as of its own framed the said point and answered it in favour of the workman, which was not sought for. Whereas, the learned counsel for the respondents/workmen contends that the issue of regularisation of the services of workmen was intimately and integrally connected with the issue referred to by the Government itself.

I am of the opinion that a plain reading of the said reference itself indicates that the whole dispute arose as to the termination of the services of the workmen without considering their demand for regularization of the services. In fact, as noted above, the services of the workmen were sought to be terminated only when they claimed regularisation and raised a dispute before the Commissioner of Labour and other authorities. Therefore, I am of the considered opinion that the issue of regularisation of service, which is answered positively in favour of the workmen by the Labour Court, was integrally and intimately connected and incidental to the reference made by the Government.

In view of these findings, there is no necessity to go into other aspects of the case. Therefore, the writ petition fails and the Award of the Labour Court is confirmed, as it does not suffer from any impropriety or illegality.

C.V. RAMULU, J

Dt. 28-7-2004

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To

1. The Chairman,

   The Hon'ble Industrial Tribunal –II

   Dwaraka Vihar, MJ Road, Nampally, Hyderabad(with records)

2. The Secretary, State of Andhra Pradesh, Incharge Labour,

   Secretariat, Hyderrabad.

3. Two CD copies.

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THE HON'BLE SRI JUSTICE C.V. RAMULU

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WRIT PETITION NO. 12761 OF 1998

Dated: 28-7-2004